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November 14, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *Ex Parte Presentation in WC Docket No. 06-172*

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Steptoe & Johnson LLP, on behalf of our client, XO Communications, hereby submits this letter summarizing an ex parte presentation made today in the above-referenced docket. Thomas J. Bliley and James D. Barnette met with Commissioner McDowell and John Hunter to provide an overview of XO Communications' position on the current wireline proceedings relating to the above referenced forbearance petition. We presented the attached news articles in support of our position. Our discussions were consistent with previous filings in the above-referenced proceedings stressing that the Commission should refuse to grant forbearance petitions that would be anti-competitive and ultimately harm consumers.

Respectfully submitted,

James D. Barnette

James D. Barnette
Counsel for XO Communications, LLC

Media Coverage of Impacts of Verizon Forbearance Petition

- ***Philadelphia Inquirer,* Verizon Request: Study Says Exemption Would Boost Bills, 11/13/07**
- ***Providence Business News*, In Deregulation, Verizon's Gain will be Business' Loss – 11/12/07**
- ***CNNMoney.com – Dow Jones*, Verizon Fights Back Over Competition Claims *– 11/8/07***
- ***New York Times,* Tom Bliley Letter, "The FCC, Cable and Competition" -- 11/3/07**
- ***Washington Post,* Carl Grivner Letter – "And Now, For the FCC's Next Trick" -- 11/2/07**
- ***Light Reading,* XO Needles Verizon – 10/30/07**
- ***Pittsburgh Post-Gazette,* Tom Bliley Op Ed -- "The Fox Watching the Hen-House" – 10/30/07**
- ***Newport News Daily Press,* Verizon Bid Could be Costly, Competitors Say – 10/30/07**
- ***Wall Street Journal,* Verizon Rate Ruling May Hit Small Business – 10/29/07**
- ***Huffington Post,* Bad FCC Decision Could Cost Consumers Billions – *10/29/07***
- ***Public Knowledge,* Billions of Reasons Not to Grant Forbearance – 10/29/07**
- ***Telephony,* No One Can Hear You Now – 10/16/07**
- ***Xchange,* FCC Gives AT&T Partial Forbearance Relief – 10/12/07**
- ***Communications Daily,* CLECs Question Forbearance Process – 10/10/07**
- ***TR Daily,* Forbearance Tops Concerns for CLECs – 10/10/07**
- ***TR Daily,* ILECs, CLECs Offer Different Paths for Future of Broadband – 10/10/07**
- ***TR Daily,* CLEC CEOs Detail Changes They Would Bring to FCC – 10/10/07**
- ***Telephony,* CLEC Vets Give FCC an Earful – 10/9/07**
- ***Network World,* Telcos Spar Over Service Pricing: Critics Say Granting Forbearance Petitions Would Hurt Competition – 10/2/07**
- ***Richmond Times Dispatch,* Tom Bliley Op Ed – *"Forbearance Promotes Telecom Free-For-All" – 10/1/07***
- ***Communications Daily,* Small businesses fear forbearance petitions – 9/27/07**
- ***TR Daily,* Business Leaders Ask Commission to Deny ILEC Forbearance Petitions – 9/26/07**
- ***Reuters*, Small carriers urge U.S. not to lift Verizon rules – 9/20/2007**
- ***Communications, Daily,* 'Procedural Rules' Sought: Competitors Ask FCC to Revise Forbearance Process – 9/20/07**
- ***Xchange*, Qwest Again Pushes for Forbearance; CLECs Ask FCC for Rules – 9/20/2007**
- ***Bloomberg News*, XO, McLeod Fight Larger Carriers' Push for FCC Rule Exemptions – 9/19/2007**
- ***Telephony*, CLECs fight for forbearance reform – 9/19/2007**
  ***New York Post*, Rivals Say Verizon Seeks Monopoly – 9/18/2007**
- ***St. Louis Post-Dispatch*, Small telecom firms say new data lines may hurt their business – 9/9/2007**
- ***Washington Post*, Telecom Changes Put Competition on the Line – 9/6/2007**
- ***Boston Globe*, Verizon asks FCC to stop reduced rates for competitors – 8/15/2007**
- ***Pittsburgh Post-Gazette,* Firms call Verizon plan anti-competitive – 8/12/2007**
- ***Dow Jones*, Provision Cuts FCC Red Tape; Lawmakers Concerned – 7/27/2007**
- ***Dow Jones*, Smaller Telecom Cos on Losing Side Of FCC Red Tape Cutting – 2/10/2007**

philly.com
The Philadelphia Inquirer

Verizon request: Study says Exemption would Boost Bills.

November 13, 2007

By Bob Fernandez

Phone customers in Philadelphia and five other cities could face higher phone and Internet service bills if the Federal Communications Commission approves a deregulation measure sought by Verizon Communications Inc., according to an economic study financed by a group of competing phone companies.

Verizon disputes the study's findings.

Local phone bills in Philadelphia could jump $87 a year per household, the study says. The total higher bill for the region could be $345 million a year, it says.

Other cities facing higher phone and Internet service bills if the FCC allows the measure are New York; Providence, R.I.; Boston; Pittsburgh; and Virginia Beach, Va.

Verizon spokeswoman Sharon Shaffer said that the study "makes no sense" and that it and publicity over the measure were "desperate acts by competitors anxious to maintain their cost advantage for as long as possible." She said: "This is a competitive market. Prices are going down, not up."

Verizon has asked the FCC to exempt it from rules requiring it to carry the "last mile" - connections to individual homes - of phone and data traffic for competitors at government-set prices.

The provision was a key part of the Telecom Act of 1996 that was crafted to help smaller companies, called CLECs, or competitive local-exchange carriers, to compete with what were then the local phone monopolies.

The law unleashed hundreds of small competitors in the late 1990s. Among those in the Philadelphia area are XO Communications, Cavalier Telephone & TV, and Covad Communications Group Inc.

The study by QSI Consulting Inc, of St. Louis warns that, if Verizon is exempted from the last-mile rule, it could raise wholesale phone rates 200 percent to 300 percent.

August Ankum, chief economist with QSI, said customers could see rate hikes "they have not seen in a long time."

Local competitors installed their own trunk lines of fiber-optic and communication lines and then leased the last-mile lines into buildings and homes.

Verizon filed for the exemption - or "forbearance," in regulatory-speak - in September 2006. The commission is expected to act on the request at its Dec. 5 meeting, or before then, industry officials said.

The FCC allowed the exemption in Omaha, Neb., when Qwest Communications International Inc. requested it in 2005, claiming tough competition in that market, said James Crawford, spokesman for XO Communications.

There was more competition in Omaha than in the six cities where Verizon wants exemption from the rules, Crawford said. Verizon has said the exemption is necessary because it faces phone competition from cable companies such as Comcast Corp. and from wireless service providers.

Shaffer said Verizon believed that it was providing the last-mile connection at below-cost levels and that it would like the prices to be market-based.

PBN .com PROVIDENCE BUSINESS NEWS

In deregulation, Verizon's gain will be business' loss
Guest Column: David Lund
Nov. 12, 2007

At my plumbing business, we're on call 24 hours a day, seven days a week. That's because our clients won't accept slow service during an emergency. If we are not there, they will pick up a phone and call another plumber. That's just how the free market works.

Unfortunately, the telephone market in Providence may not work that way much longer – with the result being higher prices for me and every other small business owner in the area.

Right now in Washington, D.C., the Federal Communications Commission is considering a petition from Verizon that would release the telephone giant from its obligations to share portions of its phone network to local competitors at regulated rates. In other words, Providence-area businesses may soon see fewer choices and higher rates for the phone service we need.

When I was growing up, families and businesses had no choice in phone service – either you paid Ma Bell or you didn't have a phone. Fortunately, that monopoly structure was broken up years ago. Then in 1996, as the Internet was becoming an essential for most businesses, Congress passed legislation that required "baby" Bell telephone companies such as Verizon to allow competition into their markets. Soon hundreds of independent phone companies began offering customized services, personalized attention and competitive rates to businesses and organizations as an alternative to the Bell companies, using the legacy telephone lines owned by the Bells.

That legislation created a more competitive telephone market in Providence. Each year, when my telephone service contract is up, I pick a new provider by requesting multiple bids from local companies. My plumbing business relies on local competition to get the best rate. Today, approximately 15 percent of small businesses and organizations receive services from a company other than a baby Bell provider.

However, under an obscure provision of current telecommunications law, the Bell companies can apply to the FCC for "forbearance" – that is, an exemption from regulations.

Last fall, Verizon filed forbearance petitions with FCC that sought exemption from all pro-competitive network sharing and dominant carrier requirements in six major metropolitan areas, including Providence. Verizon claimed such massive deregulation was justified because of alleged "extensive" competition it faces from cable companies and others here as well as in Boston, New York, Philadelphia, Pittsburgh, and Virginia Beach.

Unless the FCC acts to deny the request, Verizon will no longer provide access to the public phone network to competitors offering cost-effective and innovative services to consumers including small and mid-sized businesses in here in Providence.

Verizon already controls of more than 75 percent of the business market in its service areas, so offering concrete "evidence" of competition should be impossible. Here in Rhode Island, many would say that cable offers a strong challenge to the Bell monopoly. However, cable infrastructure is predominantly built to residential areas, because it was originally designed to deliver video, not telephone service. Cox Communications, the dominant cable provider in the area, serves only a little more than 150,000 business customers in the entire country, not just Rhode Island. Compared to Verizon's market share, both in-state and throughout the East Coast, this is a small number.

Verizon will try to skew the facts and argue that future, hypothetical competition from cable companies, which don't currently serve business customers in any meaningful way, justifies its deregulation.

Even though it may sound far-fetched, such arguments have succeeded in the past. Another Bell company argued and won a similar decision in 2005 in Omaha, Neb. The largest non-cable competitor there, McLeod Communications, immediately began experiencing losses and has since been bought out. Telephone rates in the area skyrocketed, with some experiencing a 360-percent increase.

A new economic impact study by market research group QSI Consulting reveals that Verizon likely will burden Providence with almost $85 million annually in additional monthly charges if federal regulators approve the pending deregulation bid. According to a recent FCC report, average monthly costs for telephone service last year already rose 2.5 percent in residential markets and 3.5 percent for businesses, a significant one-year increase.

If Verizon is successful in squeezing out Providence competitors, they also will drive out product innovation, competitive rates and personalized services, not to mention local jobs. Competitive phone companies hire customer service representatives, sales professionals and telecom technicians in the local community they serve.

Unfortunately, Providence small business owners like me may soon find out what life was like 30 years ago, before competition and innovation revolutionized the industry. Only this time around, we'll pay Verizon instead of Ma Bell. •

David Lund is the president of Providence-based F.G. Lee & Son Plumbers.

Verizon Fights Back Over Competition Claims
By Corey Boles, Dow Jones
Nov. 8, 2007

WASHINGTON (Dow Jones) – Verizon Communications Inc. (VZ) fought back Thursday about claims made by rival telecommunications companies over the level of competition in major East Coast markets it is seeking regulatory relief in.

In a letter sent to the Federal Communications Commission, the telco giant disputed the claims made by the smaller phone companies that rely on Verizon's infrastructure to offer service.

It said that in each of the six markets it is asking the FCC to allow it to charge higher rates to these companies that lease access to its network, there is extensive facilities-based competition.

The letter is a continuation of Verizon's aggressive lobbying campaign at the FCC over the issue.

FCC commissioners are obliged to decide by Dec. 5 on the request for regulatory relief, known as a forbearance petition in industry jargon. Verizon filed the petition nearly 15 months ago.

The six markets are Boston; New York; Philadelphia; Pittsburgh; Providence, R.I.; and Virginia Beach, Va.

Verizon said in addition to the smaller competitive companies that lease their networks, it also faces competition from cable companies, fixed wireless providers and voice-over-Internet-protocol providers.

In the letter it said that there was more competition in these markets than there is in Omaha, Neb., and Anchorage, Alaska, two other markets where the FCC allowed the incumbent phone companies to raise its prices.

Two weeks ago, an economic study commissioned by XO Communications, one of the companies that competes against Verizon in some of the East Coast markets, concluded that small business consumers could see their telecommunications bills rise by around $2.4 billion a year.

The study looked at the rates Verizon currently charges rivals to lease its network, and then what they could charge if the FCC removed the regulations to reach that figure.

Verizon disputed the amount, saying that even if it did raise prices, it would generally offer "discounts off the sticker price" to these companies.

At issue is whether the large incumbent phone companies now face significant competition that they should no longer have to be forced to lease access to their networks at artificially low prices.

Mary Albert, assistant general counsel at Comptel, the lobby group representing smaller phone companies, said that Verizon's letter didn't say anything new.

"This argument is nothing new. The record that has been developed over this issue definitely shows that it's not the case that there is the levels of competition Verizon asserts there is," said Albert.

The New York Times

Nov. 3, 2007

The F.C.C., Cable and Competition

As a principal author of the 1996 Telecommunications Act, I am all in favor of the competition that may result from F.C.C. action in this area. What the article misses, however, is the irony in the F.C.C.'s action.

At the same time it apparently wants to promote competition for our television service, the F.C.C. is seriously considering a death blow to high-speed Internet and other telecommunications services. Verizon, one of the huge beneficiaries of any F.C.C. action on apartment access, has filed a so-called forbearance petition with the F.C.C. seeking relief from any regulation under the 1996 act. That means that Verizon will be able to shut out its competition completely, because it controls the lines that get to business and residential consumers.

A recent study estimates that by granting this petition, the F.C.C. will cost New York consumers nearly $1.4 billion per year — $132 per household.

Tearing down one monopoly while allowing another to be created doesn't make sense. The F.C.C. should be in the business of promoting pro-consumer competition in the entire telecommunications marketplace. That was the promise of the 1996 act.

Tom Bliley

The writer is a former chairman of the House Committee on Commerce.

washingtonpost.com

And Now, for the FCC's Next Trick

November 2, 2007

When Roman emperors needed to appease the populace, they doled out "bread and circuses." By acting to lower cable TV rates ["FCC Ready to Ban Exclusive Cable Contracts," Business, Oct. 31], the Federal Communications Commission got the circus part right. This distracts the public while the FCC prepares to say no on the more vital issue of competitive telecommunications.

It's a familiar pattern. First the FCC approved the mega-mergers that eliminated MCI and the old AT&T. Now it is helping Verizon stamp out what remains of telecommunications competition.

The FCC will soon decide whether to disconnect millions of East Coast consumers from competitive services. By exercising "regulatory forbearance" in markets from Virginia Beach to Boston, policymakers can erase current rules that require Verizon to keep its wholesale network open to competitors. Companies such as XO need these "last mile" links to deliver economical service.

An FCC misstep will mean higher charges. According to a new study by QSI Consulting, regulatory forbearance would cost consumers roughly an extra $114 per household next year.

The FCC may not be moved by the prospect of higher charges. We can all take solace in cheaper cable TV.

CARL GRIVNER

President and Chief Executive

XO Communications

LIGHT READING

XO Needles Verizon

October 30, 2007

WASHINGTON -- In a filing with the Federal Communications Commission today, XO Communications for the first time publicly-disclosed its own on-net building presence, showing that one of the industry's largest competitive providers has only 0.01% of all commercial buildings "on-net" in the markets impacted by Verizon's forbearance petitions.

XO Communications’ filing refutes Verizon’s claim that competitive service providers are not providing market data on actual competitive presence. XO Communications’ data further demonstrates the comparatively small number of “on-net” buildings served directly by the competitive industry versus Verizon’s overwhelmingly dominant share.

The Fox watching the henhouse
Don't let huge telecoms and FCC scare off smaller, cheaper competitors
By Tom Bliley
Tuesday, October 30, 2007

Henry Ford once quipped that customers could order a car in any color they liked -- as long as it was black. Consumers and businesses soon could be left with a similar "choice" in telecommunications. Under pressure from the giant Bell monopolies, the Federal Communications Commission is considering an end to rules that ensure competition and choice in the marketplace.

Incredibly, this scenario is playing out under the supervision -- and even help -- of the FCC, the regulatory agency charged with protecting consumers from the abuses of incumbent phone giants.

Under an obscure provision of current telecommunications law, the incumbent monopolies can apply to the FCC for "forbearance," that is, forgiveness, from regulations.

There's nothing wrong with regulatory forbearance, in principle. I was one of the lawmakers who agreed to put this provision into the 1996 Telecommunications Act as a safety valve to override outdated or needless rules once markets become fully competitive. But the Bells are flooding the FCC with forbearance petitions well before competition has been firmly established.

Research shows that the Bells control 99 percent of the local telecom marketplace.

To serve the remaining slice of the market, competitors rely on the availability of "last-mile" lines, which -- by law -- the old monopolies must provide, in order to help kick-start a free and open marketplace. But in a move worthy of a modern King Midas, the Bells are using forbearance to recapture that last 1 percent.

It's almost too easy. A quirk in the statute allows the FCC to look the other way and just allow requests for no rules to become the rule. If the commission says neither "yea" nor "nay" after 15 months, petitions are "deemed granted."

Bell forbearance petitions are sailing through the FCC despite evidence showing the disastrous consequences. When the FCC approved Qwest's recent petition for forbearance in Omaha, Neb., the former Bell immediately raised rates for lines used by competitors to offer service, boosting some rates as much as 360 percent.

Forced to buy overpriced circuits to serve their customers, competitors in Omaha are being forced to exit. Other competitors have abandoned plans to enter Omaha. The people most hurt are customers who have grown to count on the excellent service and attractive prices offered by competitors.

As Nebraska went, so could go the nation. If the FCC approves -- or lets slip by -- current forbearance petitions by Verizon and Qwest, it will be the beginning of the end for competitive telecom in America. The Bells already are revealing what we can expect.

According to a new FCC report, average monthly costs for telephone service last year rose 2.5 percent in residential markets and 3.5 percent for businesses, a significant one-year hike. While prices went up that year, service went down. In Virginia, Verizon received record fines of $17.5 million for slow outage repairs and lengthy installation delays.

Verizon is choosy about which customers benefit from innovation. Their fiber-based FiOS service has taken hold in the gated communities of Maryland and Virginia, but Verizon has failed to install a single FiOS circuit in the District of Columbia. In contrast, a more economical offering by Cavalier Telephone & TV delivers voice, Internet and 150-channel TV to the inner-city neighborhoods, suburbs and exurbs of Virginia Beach -- a market in which Verizon wants to end competition via a forbearance petition.

Expect more of the same as Verizon, Qwest, and AT&T use forbearance to empty the playing field of competitors: higher prices, rapidly declining service levels, sporadic innovation and a choke-hold on competitors.

Henry Ford was only kidding. Under competitive pressure from multiple automakers, he always made cars with a variety of colors and options, at prices customers could afford. But the choiceless future that awaits us under the telecom remonopolization is no joke. For federal regulators, ensuring telecom competition and consumers' rights should be a black-and-white decision.

dailypress.com

Newport News Daily Press

Verizon bid could be costly, competitors say

Other firms are warning about Verizon's effort to be freed from rules limiting what it can charge for leasing lines.

By Chris Flores
October 30, 2007

A study funded by Verizon's competitors says Hampton Roads consumers could get hit by an extra $104 million per year in telecommunications expenses if the government approves a pending Verizon request.

Hampton Roads is one of six regions where Verizon has filed a so-called forbearance request, which will free the company from regulation of what it can charge competitors that lease lines. The former Bell monopolies have been required since 1996 to lease to competitors at controlled prices.

Verizon has argued that competition in six regions is so intense, the Federal Communication Commission should allow the company to be free of price controls. The competitors, like Richmond-based Cavalier, say the old copper lines they lease from Verizon are often the only way to challenge the company. Verizon says it only has 19 percent of the Hampton Roads land-line phone market and is losing out to wireless and cable competitors.

The study assumes Verizon would double and triple rates paid by these competitors, who are increasingly selling phone, cable and Internet packages. As the competitors raise retail rates to business and residential customers, Verizon might follow suit, according to the study.

A Verizon spokesman said the company is restrained from raising prices because it would rather get paid for leasing lines than get nothing from a defection to cable, Internet telephony or wireless.

The total annual cost to Hampton Roads consumers would be $104million a year, said the QSI Consulting study. The biggest hit, at $2.4 billion, would occur in New York City. Together, the six cities would face $2.4 billion more in expenses annually, estimates the report.

Cavalier, which is starting to sell television service in Williamsburg, has previously said it might just pull out of Hampton Roads if the FCC grants the request.

WSJ.com THE WALL STREET JOURNAL. ONLINE

Verizon Rate Ruling
May Hit Small Business
By Corey Boles
October 29, 2007

Small businesses in Boston, New York and four other East Coast markets could face billions of dollars in added telecom costs if regulators grant a Verizon Communications Inc. request allowing it to charge competing phone companies much more to lease access to its network, critics of the proposal say.

The Federal Communications Commission must vote by the end of the year on an attempt by Verizon to be excused from several FCC rules in the commercial telecommunications market. The company has argued there is sufficient competition in the six East Coast markets in question and therefore it should be excused from the regulations. The markets are Boston, New York City, Philadelphia, Pittsburgh, Providence, R.I., and Virginia Beach, Va.

Under the current regulations, Verizon is forced to charge rates that are significantly lower than what it would likely charge in an open market.

Smaller companies such as XO Communications, which argue the FCC shouldn't consider granting such a request, say it will result in Verizon increasing its dominant position at the expense of competition. XO competes against Verizon in Boston, New York, Pittsburgh and Philadelphia.

In a study for XO, QSI Consulting Inc., based in St. Louis, said if the FCC grants the relief, small business customers could face an increase of 20% to 30% in the rates they pay for phone and Internet service.

QSI compared the rates Verizon currently charges competitive carriers to use its facilities to the amounts it could increase its prices to calculate a roughly $2.4 billion a year increase. The differences range from $85 million annually in Providence to $1.37 billion in New York City.

"Verizon won't try to increase market share because it already has such a large presence; instead it will increase its rates, which is more profitable," said August Ankum, QSI's chief economist.

David Fish, a Verizon spokesman, said the company hasn't seen the QSI study and couldn't comment directly on its findings. But he added that it appeared predicated on the assumption that rates would increase automatically.

"How do they know that? These markets are highly competitive with a variety of providers," Mr. Fish said.

An FCC spokesman declined to comment on the findings.

THE HUFFINGTON POST

BAD FCC DECISION COULD COST CONSUMERS BILLIONS
By Art Brodsky

October 29, 2007

Trying to figure out what goes on at the Federal Communications Commission (FCC) is a daunting task, particularly when it gets to the telecommunications/telephone issues. Like those new commercials for the Chevy Malibu when a woman runs into a car because it's too boring to be seen, the concepts at the FCC are viewed from the outside as totally boring and technical, not worthy of attention to all but the most dedicated reporter or public advocate.

Here's one of those concepts: Forbearance. Here's a rule of thumb: The more innocuous the word, the more money is on the table.

"Forbearance" means a company asks the FCC not to regulate it, even though the Commission legally has the power to do so. In this case, Verizon has asked the FCC to "forbear" from regulating some of the services it provides in New York, Boston, Philadelphia, Pittsburgh, Providence and Virginia Beach. It just so happens that the services it wants to be essentially deregulated are the very ones on which Verizon's competitors depend.

Applying the rule of thumb to the obscure word "forbear," how many reasons are there for the FCC to reject the deregulation petitions? How about 2.4 billion? That's not a number pulled from the air. A new study, sponsored by XO, Covad and other of the hardy band of surviving competitive local exchange carriers (CLECs), found that if the petitions are granted, consumers and businesses will pay $2.4 billion more for local phone service, high-speed Internet service and business connections.

The study by QSI Consulting said that if the FCC grants the "forbearance" petitions Verizon requested for Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach, not only will prices increase for consumers, but what little competition that currently exists will be put into jeopardy.

Think of it in terms of the classic detective novel. Verizon has the motive, the means and the opportunity to take a chunk of their competition out of action. The motive, according to the study, is to consolidate market share. The means to do so are its control over essential telecom connections competitors use. The opportunity, provided by the FCC, would allow it to eliminate competitors by charging rates much higher than those competitors pay now.

Here's how the increases break down by sector. Consumers of basic voice services will see their rates rise by another $1 billion. Business customers would pay another $751 million and broadband customers would see their rates go up by $564 million per year.

Here's how it breaks down geographically: New York consumers will pay another $1.3 billion annually; Philadelphia, $345.7 million; Boston, $280.2 million; Pittsburgh, $177.4 million; Virginia Beach, $104.1 million; Providence, $85 million.

Why would those prices go up? Pull on your hiking boots, because we're going to be tromping around in the weeds of the telecom world. Competitive telephone companies need to buy certain types of lines from the regular phone company, because after all, they are not about to duplicate the existing network. The way things stand now, Verizon charges the competitors according to a price schedule worked out by the FCC designed to give the competitors some breathing room and provide some competition.

The "relief" that Verizon is asking for would make those price schedules go away, and Verizon would then be allowed to charge its competitors anything it wanted at the wholesale level. Verizon has said that if it wins its "forbearance" relief, it will charge its competitors according to a different price schedule - one that's higher than the prices they pay now.

For example, in Boston, a particular type of circuit for which a competitive company now pays $572.12 monthly for under the current pricing plan would cost $2,375.50 under the price schedule Verizon has said it will use. In New York, another type of service that competitors needs now costs $60.57 monthly; it would go to $328.70 under the plan Verizon has in mind.

The price increases for these internal services would then be passed on to consumers, forcing the competitors to raise prices. The study found the result disquieting: "In short, the elimination of retail competitors, CLECs, from the market as a result of the requested forbearance would increase the degree of Verizon's market power and, potentially, induce collusion, and is yet another reason to anticipate higher retail prices as well as diminished consumer choice if forbearance is granted."

There's little competition around already for consumers and, surprisingly, for big business. Most people had assumed that big businesses could take care of themselves. But the Government Accountability Office, in a landmark study found that in places where the FCC has already given telephone companies new "pricing flexibility" on the assumption that competition would keep prices in line, prices are either the same or higher than in places where prices are still regulated. That's because the market for certain heavy-duty services used by businesses is much less competitive than previously thought.

The majority of the FCC believes in the myth of competition, even as it helps to kill off competitors. There's no reason to think that at the end of the year, Verizon won't get much of what it wants when this request comes up for a decision, even though there are lots of reasons it shouldn't.

Public Knowledge

Billions of Reasons Not to Grant Forbearance

By Art Brodsky

October 29, 2007

How many reasons are there for the Federal Communications Commission (FCC) to reject the deregulation petitions Verizon filed for six cities in the Northeast? How about 2.4 billion? That’s not a number pulled from the air. A new study, sponsored by XO, Covad and other of the hardy band of surviving competitive local exchange carriers (CLECs), found that if the petitions are granted, consumers and businesses will pay $2.4 billion more for local phone service, high-speed Internet service and business connections.

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TELEPHONY

No One Can Hear You Now
By Carol Wilson
October 16, 2007

I spent considerable time last week listening to established competitive service providers talk about the eminent danger of rulings in Washington such as last Thursday's partial victory by AT&T in a broadband forbearance ruling.

A lot was said about the danger to competition, but it all boils down to this: Incumbent telephone companies still control the last several feet of access into the vast majority of buildings that house U.S. businesses. Take away rules that require them to resell that access at reasonable prices and the amount of competition for business services decreases.

It's not a hard concept to grasp. It should be possible for the FCC to say it has determined, based on hard data, that a certain percent of U.S. businesses do, indeed, have access to multiple service providers over physical lines other than those provided by the incumbent, and therefore regulation of those facilities is no longer needed. But none of the three commissioners who voted on AT&T's side of the issue came out and said that. One -- Robert McDowell -- asked for more data on the topic. Beyond that, the discussion was all around encouraging investment in broadband, by taking away AT&T's need to resell what it builds to competitors.

What strikes me is the vacuum of information in which the FCC claims to be making its choices. Competitive service providers, including XO Communications, Time-Warner Telecom and others, have gone on the record saying they have provided the FCC with the data showing the lack of alternate access into most buildings. Yet it seems that either that data is being ignored or it isn't getting through to the right people.

TWT President and CEO Larissa Herda said at last week's Telephony Live conference that the competitive service provider industry needs to be coming together and speaking more loudly at this critical juncture and she's right. Herda also pointed out that the loudest voices and deepest pockets of those who battle the incumbents in Washington -- AT&T and MCI -- are now silent, leaving those who remain to dig deeper and scream louder.

The FCC still has an open proceeding on special access in which it could choose to fix some of what ails the competitive service provider segment. Again, it would be nice to see the data on which decisions are being made. How hard can that be?

xchange

FCC Gives AT&T Partial Forbearance Relief
Kelly M. Teal
October 12, 2007

The FCC late Thursday night partially granted AT&T Inc.’s petition for forbearance from rules governing its commercial broadband services.

Perhaps of greatest concern to CLECs is that AT&T can price its commercial broadband services as it sees fit and not share those rates with providers using its networks.

The FCC issued a statement just minutes before the midnight deadline on Oct. 11. If commissioners hadn’t made a decision by that time, AT&T’s request would have been “deemed granted,” as Verizon Communications Inc.’s was last year. Instead, commissioners voted 3-2 down party lines to grant AT&T's petition in part. Democrats Jonathan Adelstein and Michael Copps called AT&T's evidence for forbearance "altogether underwhelming."

AT&T no longer has to abide by detailed rate obligations. Those include dominant carrier tariff filing, cost support, discontinuance and domestic transfer of control. The company also gets to shed some Title II responsibilities, but that relief applies only to certain broadband services it offers now, such as frame relay, ATM, LAN and Ethernet. It excludes all TDM-based, DS1 and DS3 services.

However, the FCC also established a complaints process, presumably to appease competitive carriers that have lobbied against AT&T's request. The commission said any complaint made against AT&T would have to be resolved within five months.

The carrier must continue supporting public policy initiatives such as E911 and CALEA.

AT&T last year filed its "me too" request after the FCC in March 2006 couldn't reach a consensus on Verizon's forbearance plea and it was deemed granted because the deadline passed with no vote. No one really knows the extent of the relief Verizon received because the FCC does not issue orders on matters deemed granted. There is a lengthy order regarding AT&T's relief, however, on the FCC's Web site.

The FCC on Thursday focused solely on AT&T's petition. It must address others that are pending by Qwest Communications International Inc., EMBARQ Corp., Frontier/Citizens Communications and another from Verizon. Qwest wants the same regulatory relief it got in Omaha in 2005 in four of its key markets — Denver, Minneapolis, Phoenix and Seattle — because it says it faces intense competition from wireless, cable, IP and other providers.

Verizon has started singing the same tune and wants relief in six of its Northeast markets. The EMBARQ and Frontier/Citizens requests might not be as applicable to CLECs as those from Qwest and Verizon, but they could set precedents that would harm the competitive carrier industry.

Forbearance was the subject of much discussion this week at the COMPTEL convention held in Dallas. Lawyers for competitive providers say the forbearance process is broken and takes advantage of a loophole in the 1996 Telecom Act. The Bells disagree, saying that while laws aren't perfect, forbearance is part of the law and they plan to take advantage of it.

COMPTEL is making extra efforts to rally its members to take a stand against Bell forbearance petitions and other anti-competitive actions. The association has hired a second lobbyist consultant to help it reach lawmakers and started a Web site, www.freetocompete.com, to educate consumers and motivate them to call and write their representatives.

The next deadline for the FCC to act on a forbearance petition is Dec. 5. Commissioners will have to address Verizon's six-MSA request by midnight or let the plea be deemed granted.

WARREN COMMUNICATIONS NEWS Telecom & Media Intelligence www.warren-news.com

Communications Daily

The Authoritative News Service of Electronic Communications

CompTel Show

CLECs Question Forbearance Process

By Edie Herman

October 10, 2007

DALLAS -- As a late Thursday deadline approached for the FCC to act on a broadband forbearance petition filed by AT&T, competitive local exchange companies were urging those at the CompTel convention in Dallas to be more vocal at the FCC about their opposition to all types of forbearance requests showing up at the agency.

Panelists said the process used at the FCC to consider forbearance petitions can't be what Congress envisioned when it gave the FCC forbearance authority in Section 10 of the Telecom Act.

It's doubtful the FCC's decision on the AT&T broadband petition will be known until late at night Thursday, and that's indicative of the problem, said Cavalier Vice President Francie McComb. Key evidence sometimes isn't entered into the record until the last minute during forbearance proceedings, and opponents have little time to respond, she said. Cavalier was one of several CLECs that recently petitioned the FCC to devise a formal, more open procedure for handling forbearance petitions.

"I don't think these kind of big ticket policy decisions were ever intended to be decided by forbearance petitions," said Gregory Kennan, federal counsel for One Communications. "That can't be what Congress intended" in devising the forbearance procedure, he said. "The FCC is very political, subject to influence" from a variety of sources, Kennan said. Some forbearance petitions seek "exemption from dozens of statutory provisions," said Sprint Nextel Vice President Anna Gomez. It would be good if the FCC focused on the merits of these deregulation requests, rather than getting caught up in politics, she said. Section 10 "has created a mess," said Kennan.

The AT&T petition is one of several patterned after enterprise broadband relief Verizon won last year. The FCC reportedly may try to combine the AT&T request with the other pending petitions in a single order, an effort that failed last month when the FCC tried to do that in time for the deadline for Qwest's broadband forbearance petition.

Forbearance petitions have specific deadlines for FCC action, and agency failure to act in time deems a petition automatically granted. Verizon's broadband petition was "deemed granted" last year. Qwest agreed last month to withdraw its "me-too" petition after the FCC got deadlocked on the contents of the bigger order and was faced with either denying the Qwest request or letting it automatically go into effect.

Waiting in the wings are two requests by Verizon and Qwest for forbearance from a different type of regulation -- unbundling -- both with Dec. 5 deadlines, speakers said. These petitions, in which the two incumbent LECs seek UNE forbearance in a total of ten MSAs, are similar to one that eliminated Qwest's unbundling requirements in Omaha two years ago. The pending petitions would eliminate the need for incumbents to sell loop and transport elements to competitors at regulated rates. They're particularly threatening to those competitive local exchange companies dependent on unbundled network elements to reach customers, speakers said.

Incumbents often cite cable competition as a justification for UNE forbearance, but many cable companies don't provide loop and transport UNEs to CLECs, Gomez said. "That is not in their business plan," said McComb. Special access is mentioned as an alternative to UNEs, but then the incumbents make moves to forbear from special access pricing as well, said Gomez.

Another alternative is to get UNEs through commercial agreements with incumbents but CLECs don't always get reasonable deals, said McComb. Vendors and customers should join CLECs in speaking out against those upcoming UNE forbearance petitions because fewer CLECs mean less choice for customers and less equipment that vendors can sell, they said. "If a CLEC has to exit the market, there is less to buy" from vendors, Kennan said. "Make your voices heard."

Qwest Official Defends Forbearance Bids

Incumbent carriers file as much information as they can when petitioning the FCC for forbearance, Qwest Staff Director Dave Teitzel said during a Wednesday panel. Competitors frequently say information is lacking, but the only data not available is what Qwest doesn't have -- competitive information held by the CLECs themselves, Teitzel said. "I don't know how companies like Qwest could come up with information it doesn't have," he said.

Qwest can determine competition from factors such as the amount of customers it has lost or how many access lines are purchased from Qwest, but it can't know exactly how many customers the competitors have, Teitzel said.

"What we don't have is known only to competitors." Christopher McKee, Starvox general counsel, said he agreed with that in one sense: CLECs must share concerns with the FCC about lost business as the result of forbearance decisions. "If you think your business will be devastated, it's up to you to tell the FCC," he told the audience.

When moderator Genny Morelli, a Washington attorney, asked panelists whether they think the forbearance statute works, there was some sentiment that tweaks at least might be useful. Teitzel said "the law is the law" and "given adequate evidence," the FCC acts the way that section 10 requires. But if another Telecom Act surfaced it wouldn't be surprising if the forbearance section were rewritten because of the debate surrounding it, Teitzel said: "Until then, it is what it is."

"The problem is, section 10 requires the FCC to do reverse rulemaking," said NCTA Associate General Counsel Steve Morris. "When you have a provision as broad as section 10 and standards are so vague, it makes it difficult for all." The 15 months given the FCC to decide on forbearance requests isn't long enough to make decisions, he said. Not only does the commission have to gather data and "crunch numbers," it also has to make a major policy decision, Morris said.

The FCC could make a "partial fix" without legislation "by making sure petitions are complete as filed" rather than letting the incumbent make changes during the review process, said Angela Simpson, Covad government affairs director. "It's virtually impossible to do that," Teitzel replied.

Asked whether one competitor, usually cable, is enough to justify easing an incumbent's regulation, Teitzel said that in the four MSAs where Qwest is seeking unbundling forbearance "we would argue there is more than one competitor; it's a very chaotic market, subject to change." Asked about whether cable even offers services to businesses, Teitzel said Cox in Omaha, where Qwest got forbearance two years ago, mainly serves business.

Nonetheless, McKee said, "I think the FCC will do the right thing and reject the UNE forbearance petitions filed by Qwest and Verizon."

TR Daily

FORBEARANCE TOPS CONCERNS FOR CLECs
AT CompTel CONVENTION
By Ted Gotsch
October 10, 2007

GRAPEVINE, Texas - The forbearance process that is being utilized by incumbent service providers to try and get around dominant carrier rules is placing the marketplace in peril because many competitive local exchange carriers will lose their ability to serve businesses and consumers if the ILECs are successful, CLEC and wireless executives said.

With AT&T, Inc.'s Oct. 11 deadline to have the FCC deal with its waiver plea for certain enterprise broadband services looming over the fall CompTel convention here, CLEC officials en made it clear that the forbearance process needs to be revamped by the FCC soon if the agency wants to prevent a return to the industry's formerly monopolistic ways.

During a panel discussion today, several CLEC representatives voiced their displeasure with the way such petitions are handled by the FCC, saying the Bells who have led the way in seeking such relief are not meeting requirements of section 10 under the 1996 Telecommunications Act. They also said that incumbent carriers have taken advantage of loopholes in the provision by not filing until the last possible moment all of the data to support arguments for why they should be granted waivers, a practice which CLECs say hinders them in trying to rebut ILEC claims.

"One of the things we are seeing as a very disturbing trend is the failure to file" proper pleadings "that don't go through section 10 analysis in any detail," said Anna Gomez, Sprint Nextel Corp.'s vice president-government affairs, federal regulatory. She said that many times, the initial petitions offer "no evidentiary support" for their position, and that is something the Commission needs to change. "We need to make sure the FCC focuses on the merits of the arguments before them," she said.

Gregory Kennan, federal counsel for One Communications Corp., said forbearance was never intended as a process to govern "these big ticket policy issues." "And the deemed granted makes it worse because it takes the control away from the agency," he said, because it allows an end-around approach from what Congress intended.

Francie McComb, Cavalier Telephone LLC's vice president-external & governmental affairs, also said competitive providers are being kept in the dark, and that is why Cavalier and other CLECs earlier this year filed a proceeding asking the FCC to clarify the rules of the road for forbearance proceedings. "The question is really from an access perspective," she said, noting that if an ILEC makes a filing "at six o'clock at night, you may not even see what has happened."

Others called into question the data presented by the Bells in their petitions. XO Communications, Inc., for example, is part of a group of competitive providers who filed a petition with the Commission questioning the data presented by Verizon Communications, Inc., to justify its waiver petitions in six metropolitan areas in its Northeast and mid-Atlantic incumbent region. Much of it was based on enhanced "911" data which is correlated only to telephone numbers, and doesn't take into consideration who is the provider of the underlying facilities, said Heather Gold, XO's senior vice president-external relations. In fact, numbers used as part of a Virginia proceeding looking at the issue were discovered to be off between 64% and 900%, she asserted.

While the Bells have insisted that their numbers are off because competitive carriers won't make their statistics available, she said XO and other carriers have made unredacted filings with the FCC that provide such numbers, and that they are also easily attainable by looking at each CLECs' marketing. "Are we putting our addresses in the FCC record? No," she told TRDaily. "But to say they can't get it is bogus." She noted XO serves 3,000 commercial buildings in 75 markets. She said XO will continue efforts to build up the record at the FCC.

Speaking about Verizon's forbearance petitions, Ms. Gold said if the FCC uses its Omaha, Neb. forbearance order as a model for deciding the case, it cannot rule in Verizon's favor. "The Chairman is very interested in upholding the Omaha standard," she said. "So we want to show it doesn't reach the Omaha standard."

Not everyone in the CLEC community, however, believes that decision should be held up as a model decision. Royce Holland, chief executive officer of McLeodUSA Telecommunications Services Inc., said the Commission's predicative judgment that competition would continue to thrive there because Qwest Corp. would move aggressively into the wholesale market hasn't happened. He notes that unbundled network element T-1 prices have risen 250%. "There is no incentive to negotiate a deal," he told TRDaily.

He added that McLeodUSA has filed a reconsideration petition with the FCC asking it to overturn the decision, and that the company will pull out of the market if the Commission ruling is not changed. As it stands, the carrier has lost access to 73% of the Omaha business market, he said.

But in the short-term, Ms. Gold said she does not foresee monumental changes. She does not expect the FCC to formulate a proposal that includes both AT&T's waiver from enterprise broadband services and special access by Thursday's deadline for AT&T petition, and in fact expects pressure to be placed on AT&T to withdraw its petition. "You don't know where the votes are for Thursday," she said. However, she said she would like the Commission to handle the me-too petitions filed by ILECs and those dealing with special access together.

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TR Daily

ILECs, CLECs OFFER DIFFERENT PATHS FOR FUTURE OF BROADBAND
By Ted Gotsch
October 10, 2007

GRAPEVINE, Texas - Incumbent and competitive providers offered divergent views today on where they believe the broadband network is heading andwhat it will mean for competition in the marketplace.

Speaking at separate panels here at the fall CompTel convention, a Qwest Corp. executive said the company is focusing on providing customers with the bandwidth they need so they can accomplish what they want on the Internet, be it writing e-mail or participating in interactive online gaming. However, competitive carriers say some Bells are taking away options for those seeking advanced telecom services.

A Qwest official said the company is ramping up its wholesale business so that content providers can take advantage of its growing network. "We want whatever content you provide to ride on Qwest's network," said Melissa Newman, Qwest Corp. vice president-regulatory affairs.

But Heather Gold, senior VP-external affairs at XO Communications, Inc., said incumbents want that traffic on their new fiber networks, not on the copper ones they are trying to leave behind. She noted that some telcos want to cut their copper loops once fiber is connected, which could have a significant effect on competition. "It is very important that we bring copper with us," she said. "Once it is retired, it is almost impossible to bring back."

While many thought a copper network could not provide the kind of Internet speeds necessary to run the bandwidth-heavy applications that continue to be developed, the technology exists to allow up to 20 megabyte speeds now, and many believe it could allow speeds up to 100 megabytes, competitive carrier officials said. "We are desperately in need of innovation to bring broadband to the forefront," Ms. Gold stated. "Bandwidth can be achieved that goes beyond what was thought to be possible."

Craig Easley, associate VP-marketing for Actelis Networks, said that fiber alone cannot provide the future broadband network. He noted that only 12% of businesses are passed by fiber, and that figure is growing by less than 1% per year. Thus, it is in everyone's interest to continue perfecting copper technology, he said.

TR Daily

CLEC CEOs DETAIL CHANGES
THEY WOULD BRING TO FCC
By Ted Gotsch
October 10, 2007

GRAPEVINE, Texas - The heads of three competitive local exchange carriers, speaking at the fall CompTel conference here on Monday, pulled no punches when it came to explaining what they would do if they were installed as chairman of the FCC.

The chief executive officers of XO Communications, Inc., McLeodUSA Telecommunications Services, Inc., and Hypercube LLC each said they would take the Commission in significantly different directions than they believe it is heading currently, with one making it clear he thought the agency is "broken."

Ron Beaumont, Hypercube's CEO, said the Commission should be transformed into a non-partisan body and efforts should be made to curtail what he said is the agency's "big business" bias. "It needs a redo," he said. "They are too bureaucratic and slow to react."

McLeodUSA CEO Royce Holland agreed, and said one area of focus should be in the arbitration process among carriers, which he said currently hampers many competitive carriers.

But Carl Grivner, XO's CEO, said the way the FCC functions need to become more collaborative, and include the positions of all regulators, regardless of their political affiliation. He said taking "all the Commissioners views" into consideration would lead to better policy decisions.

TELEPHONY

Comptel: CLEC Vets Give FCC an Earful

October 9, 2007
By Carol Wilson
DALLAS -- The Federal Communications Commission has become a bureaucratic morass, incapable of enforcing the Telecommunications Act of 1996, three competitive industry veterans said yesterday.

And that was the nice stuff.

When XO Communications President and CEO Carl Grivner, McLeodUSA President and CEO Royce Holland and HyperCube President and CEO Ron Beaumont were asked what they would do as FCC chairmen, there was no mincing words.

“To say I am thoroughly disgusted is as nice as I can be,” Beaumont said. “I think the whole system is broken. We need a non-partisan FCC.”

Of particular concern to all three men are the pending forbearance petitions that would enable incumbents AT&T, Qwest and Verizon to stop selling some parts of their networks to competitors on the grounds that there is enough competition to protect consumers from price increases.

The CLEC industry is fighting hard against the FCC, and getting some support from both Democrats and Republicans in Congress, but the three vets said the regulatory process itself is badly broken.

“What’s always lacking at the FCC is a dispute resolution process,” Holland said. “It’s a paper tiger. Carriers won’t pay their bills for interconnection, they won’t follow the rules. What is badly needed is a dispute resolution process that is based on arbitration, by industry experts, and not by the courts, where the judges who aren’t industry experts can be overwhelmed by lawyers. And then there needs to be strict enforcement, with fines and forfeiture.”

Increasingly, said Grivner, what happens at the FCC is totally behind closed doors. “It’s very behind-the-scenes until the very last minute,” he said.

A non-partisan FCC would be less likely to tilt heavily to one side’s favor, as the FCC does today with large incumbents, Beaumont said. “If you look back, post-divestiture, [the incumbent Bells] were afraid of the FCC,” he said. “Now they couldn’t care less. It’s too bureaucratic, too slow and non-reactive.”

NETWORKWORLD

Telcos Spar Over Service Pricing:
Critics Say Granting Forbearance Petitions Would Hurt Competition

By Brad Reed
October 2, 2007

Representatives from both local and national telecom companies fought over the future of telecom service pricing during a House Energy Subcommittee hearing Tuesday. The companies' arguments stemmed from the FCC's decision last year that lifted restrictions on what Verizon could charge its competitors for high-speed data services. Because many carriers rely upon infrastructure owned by telcos such as Verizopn, AT&T and Qwest and to provide last mile connections for their customers, many providers have expressed concern that companies owning last mile infrastructure could now have the power to price competition out of the market.

Tom Tauke, Verizon's executive vice president for public affairs, argued during the hearings that the FCC should grant other companies' forbearance petitions, thus giving them the power to price their high-speed broadband services whatever they choose. Currently, both Qwest and AT&T have filed forbearance petitions and are awaiting word from the FCC. Forbearance petitions typically let incumbent carriers obtain FCC waivers from rules requiring them to offer their "local loops" to smaller companies at competitive rates. Critics say the petitions deprive communities and businesses of access to affordable and innovative new broadband services.

"Similar freedoms granted to Verizon almost a year and a half ago have been a dramatic success story," said Tauke, who noted that the lift on pricing restrictions had given Verizon "the flexibility to craft customized solutions to better meet the needs of our customers." He also accused companies who opposed granting forbearance of "trying to use regulatory measures to undermine a successful market-based business environment."

On the other side of the argument was Brad Evans, the chairman of Virginia-based Cavalier Telephone & TV. Evans said that Verizon's desire for forbearance was part of a determination to "eliminate all competition by any means possible." Specifically, he said that granting forbearance petitions to Verizon and other telcos would hurt other companies' ability to provide last mile connectivity.

"The last mile of copper wires is essential to Cavalier's ability to compete," he said. "It has allowed us to provide new innovations by inventing startling new uses for copper facilitiesTime Warner Telecom CEO Larissa Herda sided with Evans in the dispute and argued that granting AT&T's and Qwest's petitions would stilt the spread of Ethernet services to American businesses.

"The only practical means of expanding the availability of Ethernet services is for the FCC to mandate lower incumbent lower exchange carrier (ILEC) Ethernet wholesale prices," she said. "That will not happen if the FCC grants the forbearance petitions that are now pending before the agency."

Even telcos that weren't present at the hearing made their voices heard. Heather Gold, the president of external affairs at XO Communications, released a statement today asking Congress to "fix the broken forbearance process" and also to urge the FCC to dismiss the companies' petitions.

"Independent research proves that the incumbent telephone monopolies control 98% of local network facilities that serve business customers," she said. "We need to ensure a fair, deliberative process at the FCC in dealing with forbearance petitions."

The FCC is expected to make a decision on AT&T's forbearance decision by Oct. 11, the date it had set as the deadline to approve or deny the petition. Qwest had originally hoped that the FCC would make a decision on its petition last month.

However, when it appeared that the commission needed more time to review the petition, the company withdrew it and re-filed it the next day. Commissioner Robert McDowell said at the time that he was "disappointed that Qwest felt it had to withdraw its forbearance petition" and that "in a perfect world, the Commission today would have taken another step forward to de-regulate segments of the telecommunications industry where sufficient competition has grown to obviate the need for further government involvement."

Richmond Times-Dispatch

'Forbearance' Promotes Telecom Free-for-All

By Tom Bliley
October 1, 2007

As the chairman of the U.S. House Commerce Committee, I frequently confronted decisions about the value of a competitive marketplace versus government regulation. Going back to the Sherman Antitrust Act of 1890, Americans have decided that there is a tipping point between the utility of government regulating business and the unfettered flow of the capital markets.

Imagine, though, that there was a provision in the Clean Air Act under which an old coal-burning power plant could simply write a letter to the Environmental Protection Agency and ask that it not be forced to comply with emissions regulations. Think further about the consequences if that request were simply deemed granted by the EPA if the agency did not act on it within a certain timeframe.

Or imagine that the EPA took a decade to adopt Clean Air rules relying on sound scientific evidence only to face immediately a petition from a coal-burning plant to be excluded from those rules that the agency would have to judge under a far different legal standard. Why would the agency spend the time to reach a reasoned decision if its action could be instantaneously undermined?

Unfortunately, these warped regulatory outcomes are not fiction. Because of the "forbearance" provision of the Telecommunications Act, they are real-life problems faced by telecommunications decision-makers, and the grave shortcomings in this statute have led both to unreasoned regulatory actions and to usurpation of congressional authority. Moreover, these problems have become greatly exacerbated because the Federal Communications Commission has avoided its responsibilities and engaged in a completely ad hoc process. We are now witnessing a regulatory free-for-all, with last minute filings, improper use of confidential information, and decisions reached without majority vote.

THE 1996 ACT, which I am proud to have played a role in, was first and foremost a law about competition. Congress recognized that the court-ordered breakup of the AT&T monopoly was not going to work without federal intervention. We crafted a law that allowed the Bells access to long-distance telephony so long as they complied with some reasonable regulations in allowing access to local markets. The American consumer has benefited from the competition that ensued in ways that almost defy imagination -- lower long-distance prices, a highly vigorous Internet, and unparalleled choices in service.

Remember, though, that lawmaking is like sausage making -- you may like the product, but you do not want to see its production. That is what happened with Section 10 of the 1996 Act, which allows telecommunications companies to petition the FCC to "forbear" from regulation, so long as it promotes competition. This language was the product of compromise between those who were concerned that the act might be somehow overregulatory and those (like me) who wanted to promote a competitive market in telecommunications services.

The forbearance provision largely worked for a decade, because petitioners were not seeking relief from the key pro-competitive provisions of the act. But, that began to change several years ago, and in early 2006 the FCC completely abdicated its responsibility by allowing a forbearance petition to be "deemed granted" without even the benefit of a vote. There was a total absence of due process.

UNDER THIS FCC's watch, the forbearance process has spiraled out of control, and regulated telephone companies, such as the Bells, have sought to take full advantage of it by filing a torrent of forbearance petitions. These petitions seek relief from competition in markets all across the country -- from Seattle to Minneapolis to Pittsburgh toVirginia Beach. If these petitions are granted, much less "deemed granted," it will be the death knell for competition in these areas. The Bells will be able to charge whatever they want, whenever they want, for access to their lines -- lines that their customers have paid for over the years -- to what is now a very solid community of competitive carriers.

Large, medium, and small businesses, and many residential customers who currently rely on competition will be forced into arrangements with a Bell company. It is more than ironic, a travesty really, that we are on the verge of such a market when the technological advancements of the last decade should completely obviate the rush for monopoly power.

The promise of the 1996 act was simply that: a promise. The FCC needs to make good on that promise. Granting forbearance petitions that stifle competition and harm consumers is anathema to all that we tried to create a decade ago. Coal plants can't do it; why should the Bells be allowed to?

Tom Bliley, who represented Virginia's 3rd and 7th Congressional Districts in the U.S. House from 1981-2001, was a principal author of the 1996 Telecommunications Act.

WARREN COMMUNICATIONS NEWS Telecom & Media Intelligence www.warren-news.com

Communications Daily

The Authoritative News Service of Electronic Communications

September 27, 2007

Small businesses fear that the forbearance petitions at the FCC could reduce their choice of competitive phone companies, said a letter to the FCC signed by hundreds of business owners or managers. "Many of us have chosen to do business with a smaller phone carrier because of the personalized service, attention and competitive rates," said the letter sent Wednesday. "If the FCC does not deny or dismiss the 'forbearance' petitions, our choices among competitive phone service providers will be eliminated, the rates we pay for phone service will go up, and jobs will be lost," the businesses said. The letter cited forbearance petitions filed by Qwest, AT&T, Embarq and Frontier concerning corporate broadband access -- and Qwest and Verizon petitions for forbearance from unbundling obligations in various metropolitan statistical areas.

TR Daily

Business Leaders Ask Commission to Deny ILEC Forbearance Petitions
By Ted Gotsch
September 26, 2007

A bevy of business leaders signed onto a letter sent to the FCC today that asks the Commission to reject several pending forbearance petitions before it, arguing that grant of the petitions could eliminate competition among phone service providers in several local markets.

Addressing petitions submitted by Verizon Communications, Inc., and Qwest Corp. that seek waivers of unbundling requirements in many of the largest metropolitan areas they serve, as well as ones sought by those telcos and AT&T, Inc., Embarq's local exchange companies and the Frontier and Citizen Communications Co. incumbent carriers that ask for forbearance for certain enterprise broadband offerings, the letter says small and mid-size businesses are worried that competitive providers could be put out of business if the FCC sides with the ILECs.

"Competition among phone companies has been extremely valuable to companies and organizations like ours," they state. "Competitive phone companies have ensured that we have access to the same kinds of services previously only available to much larger businesses, and at rates previously unavailable to businesses our size."

But that could go away, those signing the letter agree, if the agency does not dismiss or deny the pending forbearance petitions. "If the FCC does not deny or dismiss the forbearance petitions, our choices among competitive phone service providers will be eliminated, the rates we pay will go up, and jobs will be lost," they state.

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REUTERS

Small carriers urge U.S. not to lift Verizon rules
By Peter Kaplan
September 20, 2007

WASHINGTON - Small, start-up telephone carriers are urging U.S. authorities to reject a proposal by Verizon Communications Inc (VZ.N) that would loosen regulations on the country's second-largest phone company in some cities.

Competitors vying with Verizon for a piece of the local phone market are trying to persuade the Federal Communications Commission to keep in place rules that now force Verizon to let rivals lease access to its network.

If the request is granted by the FCC, these rivals say, it would allow Verizon to freeze out competition in New York, Boston, Philadelphia, Pittsburgh, Providence, Rhode Island, and Virginia Beach, Virginia.

"There would certainly not be robust competition," said Mary Albert, general counsel of a trade group called Comptel, which represents small carriers such as XO Communications, Cavalier Telephone, Covad Communications Group Inc (DVW.A) and EarthLink Inc (ELNK.O).

Verizon's request has been pending before the FCC for about a year, and a decision is expected in early December.

At issue are rules imposed by Congress in 1996 to foster competition in the local phone services market. They require regional companies like Verizon to let competitors lease access to their networks at a discount so they can provide service.

In its petition before the FCC, Verizon cites an FCC decision in 2005 that lifted the same regulations from Qwest Communications International (Q.N) in Omaha, Nebraska.
Verizon argued the rules are no longer necessary because the market for local phone service is now fiercely competitive with the entry of cable companies and other new rivals.

"There's obvious competition, certainly in these six cities, and I would argue more broadly than that, in a day when you have cellphone companies, cable and others providing service on the internet, all offering alternatives for phone service," Verizon spokesman Eric Rabe said in a statement.

However, Comptel says Verizon is exaggerating the increase in competition. It cited the example of a Qwest challenger that it says is being forced out of the Omaha market as a result of the earlier FCC decision.

"We have every reason to believe the same thing will happen in the Verizon markets," Albert said.

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'Procedural Rules' Sought: Competitors Ask FCC to Revise Forbearance Process
By Edie Herman
September 20, 2007

The FCC should adopt "procedural rules" to improve the way it handles forbearance petitions, five competitive telecommunications companies said in a petition filed Wednesday at the FCC. The forbearance process, mandated by Section 10 of the Telecommunications Act and implemented by the commission, has flaws that can lead to "unreasoned decision-making" and ultimately harm competition, the competitive local exchange companies said in a news briefing.

Competitors complained of not being able to review all the evidence submitted in forbearance proceedings, being unable to comment on late-filed documents and waiting for weeks before the FCC issues forbearance orders that can change their wholesale arrangements with the Bells. The petition by Covad, NuVox, XO Communications, Cavalier Telephone and McLeodUSA outlined "10 Rules of Forbearance" designed to remedy their concerns.

Among the proposed rules: (1) Limits on when petitioners can file ex parte documents during the process and guarantees that competitors and others can respond. The CLECs proposed barring petitioners from filing significant ex parte documents within 30 days of the statutory deadline for FCC action, unless requested by the commission. Interested parties would be allowed to respond to those late ex parte filings within 21 days of the deadline. If, at the FCC's request, a party filed an ex parte with less than seven days to go, interested parties would have seven days to respond. (2) A requirement that petitions are "complete as filed," which means all evidence supporting the petition must be contained in the initial filing and petitioners can't add things later unless requested by the FCC. This is a rule the commission used in reviewing Section 271 petitions filed by the Bells when they sought to enter the long distance market after the Telecom Act passed. (3) A requirement that the FCC issue a written order within seven days of acting on a forbearance petition. (4) Immediate dismissal of petitions asking for forbearance from providing unbundled network elements to competitors if they don't include all relevant "evidence of competition in wire centers."

The rules also tackle a major sticking point with competitors: The lack of a written order when a petition is "deemed granted." Verizon's grant of enterprise broadband forbearance last year occurred without an order because no formal vote occurred. Under the proposed rule, even if a petition were deemed granted, the FCC could keep trying to reach agreement afterward on either approval or denial. The FCC would keep the forbearance docket open and the chairman would poll members every 90 days to see if "circumstances permitted" revisiting the petition. Theoretically that means a petitioner could gain forbearance under the law's "deemed granted" clause but lose it if the FCC later voted to deny the petition, lawyers for the competitors acknowledged, in answering a question. The Verizon case occurred when the FCC, deadlocked 2 to 2, was unable to reach a decision by the 15-month deadline set by the Telecom Act. The proceeding occurred when the FCC had only four members.

"These companies want the federal government to undo longstanding, bipartisan competition policy that has brought amazing levels of investment and consumer choice," said a Verizon spokesman. "They want special, government-set prices, even in highly competitive markets." An industry source said competitors have "stymied" the process by refusing to provide "information on their own networks and customers" that would help the commission determine the extent of competition in markets targeted by forbearance petitions. “The modern world of communications is highly competitive and focused squarely on the future,” said a US Telecom Association spokesman. “It’s time for everyone to acknowledge the competitive changes and [adapt] to the new world.”

CLECs sometimes are unable to review or comment on data submitted at the 11th hour in a forbearance proceeding. A last-minute letter from Cox Communications, requested by the FCC, was pivotal in the agency's decisionto approve a Qwest forbearance petition in 2005, but McLeodUSA, which now questions how the FCC interpreted the letter, was unable to see it before the petition was approved, said McLeodUSA Vice President William Haas. "Decisions should not be made in the middle of the night with a shot clock to our head," said Francie McComb, Cavalier Telephone vice president, referring to the 15-month deadlines set by Congress.

Competitors also complained that orders outlining the FCC's forbearance decisions sometimes are issued long after the vote. In the Omaha case, the FCC gave competitors a 5-month transition to negotiate new contracts after Qwest gained forbearance but the order wasn't released until 2 months later, essentially cutting the transition to three months, said Haas.

The forbearance process is unusual because it doesn't conform to the Administrative Procedure Act and gives the FCC discretion to waive statutory provisions without Congressional involvement, the competitors' petition said. What's needed is for the commission "to bring some order" to the process, the petition said. Forbearance petitions have become an important tool in the Bells' efforts to gain deregulation and yet "the commission has never adopted rules to handle these critical petitions," the competitors said in a news release. The ideal solution would be if Congress revised Section 10 of the Telecom Act, but such revisions don't come easily, said Heather Gold, XO Communications senior vice president.

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Qwest Again Pushes for Forbearance; CLECs Ask FCC for Rules
By Kelly Teal
September 20, 2007

Qwest Communications International Inc. this week re-filed its controversial forbearance request for relief from last-mile broadband connection rules.

The filing came nearly a week after Qwest withdrew its original petition because the FCC couldn't reach a consensus on the matter during its monthly meeting.

Qwest submitted its new request a day after a group of competitive telcos asked the FCC to make some changes to the forbearance process, charging that, without such procedural adjustments, incumbent providers will "imperil" competition.

XO Communications, Cavalier Telephone & TV, McLeodUSA Inc., Covad Communications and NuVox on Wednesday asked the FCC to immediately adopt rules governing forbearance proceedings. Over the past two years, the FCC has given Bell and rural incumbent providers sweeping relief from government-mandated pricing and network access, safeguards put in place by the 1996 Telecom Act to promote competition. The incumbents spotted the forbearance loophole in the act and have used it to their advantage. Two of the biggest instances were Qwest's relief from certain regulations in the Omaha, Neb., market; and Verizon Communications Inc.'s relief from rules overseeing its business broadband services.

The group wants the FCC to impose a number of rules including procedural requirements to ensure that all forbearance proceedings include adequate comment and review time; requiring petitioners to submit all evidence providing forbearance is necessary and still in the public interest; preventing petitioners from filing critical information at the last minute, when it is too late for other parties to comment; and making sure the FCC issues a written order within a week of granting or denying a forbearance petition. The agency has not issued written orders of the forbearance petitions it has granted; this leaves everyone but the company involved in the dark as to the extent of the relief.

"The commission and the courts cannot retreat from their responsibility to enforce pro-competitive policy and allow the Bells to dismantle the Telecom Act piece by piece," said Heather Gold, senior vice president of external affairs at XO. "The commission needs to step up to its job of ensuring choice for consumers before it is too late. One essential element of that job is the adoption of procedural rules that govern forbearance."

There are two key Bell petitions pending at the FCC. Verizon wants relief in Boston, New York, Philadelphia, Pittsburgh, Providence, R.I., and Virginia Beach, Va. The nation's second-largest phone company has cited the FCC's approval for Qwest in Omaha as a template for its request. Qwest also has petitions for forbearance pending in Denver, Minneapolis/St. Paul, Phoenix and Seattle.

“Qwest used forbearance to undermine competition in Omaha, and now Verizon and Qwest are using the same tactic in major markets throughout the nation,” said William Haas, vice president and deputy general counsel for McLeodUSA.

Verizon and Qwest maintain that forbearance is warranted because they face intense competition from cable, VoIP and even CLEC providers in their biggest markets.

The debate over forbearance is growing more heated as fall approaches. The FCC is set to decide whether to continue deregulating telecom; first up, a series of incumbent requests for providing broadband services on a private carriage basis.

Bloomberg

XO, McLeod Fight Larger Carriers' Push for FCC Rule Exemptions
By Molly Peterson
September 19, 2007

XO Holdings Inc. and McLeodUSA Inc., phone companies that rent lines from national carriers to sell service, urged U.S. regulators to adopt rules making it harder for larger rivals to win exemptions from price caps.

The carriers want the Federal Communications Commission to fix an ``out of control process'' for deciding whether to grant exemptions to AT&T Inc., Verizon Communications Inc. and Qwest Communications International Inc., XO Senior Vice President Heather Gold said today.

FCC rules enable XO and other carriers to access lines owned by AT&T, Verizon and Qwest, the three biggest U.S. local- phone companies, at discounted rates. Requests for exemptions from those rules pose a ``real danger to competition and to consumers,'' Gold said at a news conference.

Under a proposal that Reston, Virginia-based XO, Hiawatha, Iowa-based McLeod and three other companies sent the FCC today, carriers filing so-called forbearance petitions would have to submit more data and meet several other requirements.

The process ``encourages sneak attacks on competition,'' William Haas, McLeod's vice president and deputy general counsel, said during the briefing. The proposal's other sponsors are Cavalier Telephone LLC, Covad Communications Group and NuVox Communications.

The proposal is ``dramatic wing-flapping'' by rival carriers, said David Fish, a spokesman for New York-based Verizon spokesman.

``These companies want the federal government to undo long- standing, bipartisan competition policy that has brought amazing levels of investment and consumer choice,'' Fish said today in an interview. ``Why? Because they want special, government-set prices, even in highly competitive markets.''

TELEPHONY

CLECs fight for forbearance reform

By Sarah Reedy
September 19, 2007

A trio of CLECs warned federal regulators today against freeing incumbent carriers from obligations to lease network elements to competitors. In a briefing, XO Communications, Cavalier Telephone & TV and McLeodUSA warned of the dangers so-called "forbearance" would bring to competition and consumers and challenged the FCC to adopt rules to fix the "out of control process."

Verizon Communications filed petitions last year asking the FCC to lift regulations that force the company to lease monopoly elements of its local networks to market entrants in those metropolitan areas. If its applications are granted, Verizon would be able to deny competitors access to critical network facilities that are required to serve 34 million individuals in six markets.

The FCC requires applicants to provide detailed market data demonstrating that competitors are successfully competing with it over their own network facilities. Under federal law, the incumbents' requests are automatically granted if the FCC does not act on forbearance petitions within a maximum of 15 months from their filing, meaning that the FCC has until Dec. 5 to rule on the Verizon applications.

On behalf of the competitive telecommunications companies, Heather Gold, XO's senior vice president of external affairs, proposed that the FCC adopt a set of 10 rules for forbearance to create a "fair, rational system that allows the petitioners and those commenting on the petition a fair process." These rules include adopting standard procedural requirements and confirming that the Administrative Procedures Act applies to the petition as well as that the petition satisfies the forbearance checklist. The proposed rules also include provisions to ensure full, fair and timely access to forbearance petitions and documents.

"Our major concern is the impact of these kind of petitions and the consequences of not having these rules and not having a process is a lack of innovation, reduction of consumer choice and limited competitive options," Gold said. "We're not getting better on broadband. We're falling. We're not having the same level of innovation and competitive choice brought to the market as we saw after the passage of the '96 Act."

Bell companies are using the forbearance petitions to "gut the competition that had been created by the [Telecommunications] Act," McLeod said. In July of this year, McLeod filed a petition with the FCC to modify an order in Omaha granting forbearance to Qwest. The ruling allowed Qwest to unilaterally impose huge price increases, hiking the monthly wholesale price for high-capacity local loops by 86%, McLeod estimated. William Haas, McLeod's vice president and deputy general counsel, called the judgment improper due to the filing procedure processes and the resulting reconsideration process.

"The lack of process that enabled this information to be filed literally hours before the decision was being made, with no opportunity to review or comment or produce countervailing data, was a completely unfair process for McLeodUSA," Haas said. "We had no ability to go before the FCC and explain why the data was not reliable."

“We really believe forbearance has real consequences for residential and small business customers,” said Francie McComb, vice president of regulatory affairs at Cavalier. “We’ve tried to work with Verizon, but it’s not easy, because despite our repeated requests, they have refused to provide us or any other competitor any information on how they would offer wholesale services if they were to prevail in forbearance…Forbearance poses a very real threat. The FCC should do something about it now. We ask the FCC to defend the competitive choice.”

Rivals Say Verizon Seeks Monopoly
By Janet Whitman
September 18, 2007

Telecom start-ups are worried that a possible ruling by the feds will return Ma Bell offspring Verizon Communications to its monopoly status. Verizon has asked the Federal Communications Commission to drop a requirement that forces the telephone company to let new rivals rent the "last mile" of its copper wire infrastructure at a discount.

Many competitors in the six markets where Verizon is seeking the exemption - including New York, Boston, Philadelphia, Pittsburgh, Providence, R.I., and Virginia Beach, Va. - say a ruling in the company's favor could ruin their business because it could jack up the prices they pay. Such a move, they argue, would result in fewer choices for consumers and ultimately lead to pricier phone bills.

"Verizon is seeking a massively anticompetitive rollback of one of the last few rules that allows competitors to offer choices to consumers," said one telecom lobbyist. "Duopoly competition" - with the incumbent telecom giants and cable companies dominating the phone market - "is clearly not enough to keep prices down and ensure consumers have a robust number of choices," he added.

But Verizon counters that competition has heated up considerably since the1996 Telecommunications Act, which forced AT&T and its Baby Bell descendants to offer new entrants cheap access to the multibillion dollar networks they'd built while operating as monopolies.

"Any suggestion that there's some limit on competition in these markets just doesn't recognize the reality that now [consumers can get phone service from] wireline, cable, Internet and wireless. And there are a variety of other ways of sending messages," said Verizon spokesman Eric Rabe. "People like to paint Verizon as some sort of monopoly, but that hasn't been the case for more than 10 years."

The FCC was set to rule on Verizon's request in December. Verizon filed the request with the FCC after fellow Baby Bell Qwest Communications won a similar ruling in Omaha. The competitors who pay Verizon to use its last-mile infrastructure point to that case to illustrate how getting rid of the regulation would be bad news for competition and consumers. Since that ruling took effect in March 2006, telecom provider McLeodUSA, which relies on parts of Qwest's infrastructure, has said it might have to pull out of the market because it is too expensive to operate.

ST. LOUIS POST-DISPATCH

Small telecom firms say new data lines may hurt their business
By Kim Hart, The Washington Post
September 9, 2007
http://www.stltoday.com/stltoday/business/stories.nsf/0/C900F6C6BC54EDD08625734F00759981

For most of the Industrial Age, houses primarily communicated to the outside world through basic copper phone wires.

Now, telephone giants are focusing on building fiber-optic cables made of glass that can carry far more data than can copper lines. As companies like AT&T and Verizon Communications spend billions to replace their century-old systems with new lines, they're gradually disconnecting the old copper networks.

However, smaller competitors say the disappearance of traditional copper lines could put them out of business.

Upstarts like XO Communications and Covad Communications rely on their ability to lease access to copper lines from Verizon or AT&T so they can reach their own customers. Without that access, those companies say they may have to use more expensive lines and raise rates.

The telephone giants — once part of the Ma Bell monopoly that started laying copper lines in the late 1800s — are required to lease their copper and limited parts of their fiber-optic networks to rivals to encourage competition.

However, as they invest in the newer fiber-optic networks, Verizon is asking regulators to eliminate requirements to share their networks with competitors in several major markets.

Qwest Communications International and AT&T also are replacing some copper lines but are leaving a portion so that copper lines can be used along with new fiber lines.

Ed Shakin, a lawyer for Verizon, said network-sharing requirements no longer are needed in certain cities now that cable companies and other competitors have rolled out broadband Internet and phone service.

"What competitors want are artificially low prices," he said. "It comes down to a fight about price, not availability."

Last week, 22 companies countered Verizon's argument in a letter to the Federal Communications Commission. Competition is insufficient to justify Verizon's request not to lease its network to smaller companies in six major cities, the companies said in asking the FCC to deny the request.

This year, many of the same companies also protested Verizon's ability to cut decades-old copper lines in homes as it rolled out its high-speed FiOS service.

Some companies rely on the copper lines not just to offer basic phone service but to provide advanced services. XO, of Reston, Va., provides high-speed Internet service over the existing copper lines; Cavalier Telephone, in Richmond, Va., uses them to offer digital television.

Taken together, cutting traditional copper lines while also eliminating access to the new lines could severely hurt competition, the rival companies argue.

"This poses a real threat to competitor viability," said Francie McComb, Cavalier's vice president of regulatory affairs. "We have a lot of customers that will be affected."

About 3 percent of copper lines get replaced every year, said Michael Howard, an analyst at Infonetics Research, a market research firm in Campbell, Calif.

Some policymakers say the combined impact of rivals losing access to both copper and other lines could impair the United States' push to catch up to other countries' level of broadband deployment.

Rep. Edward Markey, D-Mass., chairman of House telecommunications subcommittee, said in an interview that he thinks Verizon's petition and copper-cutting practice undermine the effort to extend high-speed Internet across the country.

"This is not just a battle between big companies and small companies — it will be viewed as an indispensable part of our broadband policy," he said.

Verizon said it would continue to make its network available to competitors but wants to negotiate new rates with the companies so they can't piggyback on its multibillion-dollar investment in the network.

Verizon also said it would reconnect the copper lines to homes if customers want traditional phone service. Verizon expects to save about $1 billion a year by 2010 by moving more of its business to the fiber-optic network, which is cheaper to maintain than copper is.

Howard said Verizon has plenty of competition from cable companies that also have upgraded their networks.

"As long as consumers have several choices, these companies need to be able to see a return on these massive investments," he said.

The FCC expects to decide on Verizon's petition in December.

The Washington Post

Telecom Changes Put Competition on the Line
By Kim Hart
September 6, 2007
http://www.washingtonpost.com/wp-dyn/content/article/2007/09/05/AR2007090502320.html

For most of the industrial age, homes primarily communicated to the outside world through a basic copper phone wire.

Now, telephone giants are focusing instead on building fiber-optic cables made of glass that can carry far more data than do copper lines. As companies like Verizon Communications spend billions to replace their century-old systems with these new lines, they're gradually disconnecting the old copper networks.

But smaller competitors say the disappearance of traditional copper could put them out of business.
Upstarts like XO Communications and Covad Communications rely on their ability to lease access to copper lines from Verizon or AT&T so they can reach their own customers. Without that access, those companies say they may have to use more expensive lines and raise rates.

The telephone giants -- once part of the Ma Bell monopoly that started laying copper lines in the late 1800s -- are currently required to lease their copper and limited parts of their fiber-optic networks to rivals to encourage competition. But as they invest in the newer fiber-optic networks, Verizon is asking regulators to eliminate requirements to share their networks with competitors in several major markets.

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But this week, 22 companies, including XO in Reston, Cavalier Telephone in Richmond and RCN in Herndon, countered Verizon's argument in a letter to the Federal Communications Commission. Competition is not sufficient to justify Verizon's request not to lease its network to smaller companies in six major cities, the companies said in asking the commission to deny the request.

Earlier this year, many of the same companies also protested Verizon's ability to cut decades-old copper lines in homes as it rolled out its high-speed FiOS service. Some companies rely on the copper lines not just to offer basic phone service but to provide advanced services. XO, for example, provides high-speed Internet service over the existing copper lines, while Cavalier uses them to offer digital television.

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Howard, the Infonetics analyst, said Verizon has plenty of competition from cable companies that have also upgraded their networks. "As long as consumers have several choices, these companies need to be able to see a return on these massive investments," he said.

The FCC expects to decide on Verizon's petition in early December.

The main goal is to give large and small companies an incentive to invest in greater technological development, said Blair Levin, an analyst with Stifel Nicolaus.

"The core policy question is the same: What drives investment in better, bigger, faster networks?" he said. "We want our telephone companies to invest in these networks, so what's the best policy to encourage that behavior?"

The Boston Globe

Verizon asks FCC to stop reduced rates for competitors
By Carolyn Y. Johnson
August 15, 2007
http://www.boston.com/business/technology/articles/2007/08/15/verizon_asks_fcc_to_stop_reduced_rates_for_competitors/

Verizon Communications Inc. is trying to shed requirements that the telecom giant give its competitors network access at reduced rates in Greater Boston and other markets on the Eastern Seaboard.

The company has petitioned the Federal Communications Commission for "forbearance" from the rules because Verizon says competition now makes the regulated rates unnecessary. The telecom giant made the request for Greater Boston and five other US metropolitan areas.

Consumer advocates oppose the petition, and lawmakers worry that Verizon's petition is an inappropriate use of an arcane piece of telecommunications law that could set a precedent allowing companies to escape regulatory obligations. Forbearance was an escape hatch built into the 1996 Telecommunications Act, permitting providers to seek relief from regulations that have become outdated.

"The effect of granting these positions would be to usurp congressionally enacted statutes in a sweeping manner," US Representative Edward Markey said at an FCC oversight hearing last month. "I have great concerns about the effect on competition and consumers that these petitions pose."

The petition itself hinges on a piece of the 1996 act meant to foster competition. The law requires companies such as Verizon to give competitors access to portions of their network at regulated prices, because building the "last-mile" connection between a central office that routes calls and a customer, or the part of the network that connects central offices, was expensive and a barrier to competition.

Verizon argues that it is now in the public interest to scrap the requirement in the Boston, Providence, New York, Philadelphia, Pittsburgh, and Virginia Beach, Va. metropolitan areas. In Boston, cable companies provide customers a choice for phone service and the company says market forces will protect consumer interests. The petition would affect the Boston Metropolitan Statistical area, including Suffolk, Norfolk, Plymouth, Middlesex, and Essex counties, as well as Rockingham and Stafford counties in New Hampshire.

"There's a tremendous amount of competitive choice in Boston in particular," said Edward Shakin, vice president and associate general counsel for Verizon. "Competition isn't going to be hurt by removal of these" price controls. "It distorts the market; it becomes harder to build service for everyone when there are subsidized services that are priced, oftentimes, lower than our cost to do it."

The petition is opposed by the Massachusetts attorney general's office and Department of Telecommunications and Cable.

"The 'market forces' alleged are not sufficient to protect the interests of consumers," the attorney general's office wrote in a filing with state utility consumer advocates opposed to the petition.
Verizon's rivals -- including Comcast and One Communications -- also oppose the petition.

Gregory Kennan, in-house attorney for One Communications, a Waltham telecom company that provides service to businesses in 16 states including Massachusetts, said that Verizon bases its argument largely on cable companies' success in picking up residential voice customers and exaggerates the competition that exists for businesses in the Boston area.

Verizon's argument relies in part on its loss of consumer and business lines due to competition, but the key evidence -- the specific numbers -- has been redacted for competitive reasons.

In Omaha, the FCC granted a similar forbearance request that took effect in March 2006. McLeodUSA, a firm that provides service to Omaha customers by buying access to Qwest's network, last month filed a motion requesting the FCC reconsider the petition.

Bill Haas, vice president and deputy general counsel of McLeod, said that Qwest's proposed network access rates are too high, and unless a reasonable rate becomes available McLeod will exit the market, leaving more than 5,000 customers to seek a new provider. The FCC must act on the Verizon request by Sept. 6 or it will automatically be granted. The commission is most likely to grant a 90-day extension and decide the issue later this year.

Pittsburgh Post-Gazette®

Firms call Verizon plan anti-competitive
By Bill Toland
August 12, 2007
http://www.post-gazette.com/pg/07224/808621-28.stm

Next month, the Federal Communications Commission might decide whether Verizon would be able to increase the fees it charges for competitors to access its networks in Pittsburgh and five other eastern U.S. markets.

But the competitors that pay to use Verizon Communications Corp. infrastructure -- mostly smaller phone and telecom companies -- say fee increases would dampen what competition there is in Pittsburgh. Consumer advocates agree, claiming that FCC chairman Kevin Martin would be re-monopolizing the industry in granting the waiver.

"Rates would go up, and alternative providers would be fewer," said Jerry James, acting chief executive officer of COMPTEL, the country's largest trade group representing smaller telecommunications companies.

The thinking goes that higher costs for the smaller phone carriers means they'd have to either pass the costs on to consumers, or cede the region to Verizon. If so, the reduction in competition could leave Verizon without marketplace checks and balances, free to raise its rates.

Verizon defends its moves, saying it needs to test what the market will pay as telecommunications gets more competitive.

"Open up the white pages, [and] there's a listing of 16 local phone providers who operate in this market," said Lee Gierczynski, a Verizon spokesman. On top of those local carriers are Internet and wireless competitors such as T-Mobile AT&T, Alltel, Cellular One and Vonage.

Almost a year ago, Verizon petitioned the FCC for an exemption to current regulations, in effect asking permission to charge network lessees market rates. The FCC would have to rule before Sept. 6 to meet a one-year deadline, but it could grant itself a 90-day extension to further consider the competitive atmosphere in the six cities.

As part of 1996 package of new telecom laws, the FCC requires Verizon and other fragments of MaBell to lease parts of the system to competitors at capped rates. To foster competition, competitors are allowed to use the parts of the infrastructure that connect copper lines to individual business and home customers.

That way, the competitors don't have to build redundant, and expensive, networks.

Verizon says competition has been sufficiently nurtured, but competitors say Verizon's erosion in landline business and residential customers is largely attributable not to competitive forces, but to its own dominant cellular firm, Verizon Wireless.

Greensburg-based Remi Communications, which competes with Verizon in both the Pittsburgh and Philadelphia markets, could end up being charged more to access the delivery lines than it would if it signed up for Verizon's services as a regular customer, said David Malfara, company CEO. "That's above retail rates," he said.

Higher prices would reduce not only competition, but also, possibly, the incentive and money available for improving broadband access. That's because companies that rent the copper lines from Verizon provide not just telephone service, but they also soup up the lines with their own equipment in order to offer broadband Internet and video services.

There is precedence for the exemptions. Verizon requested, and received, FCC "forbearance" relief from state and federal laws regulating high-capacity voice and data services. (That ruling was challenged by competitors in the U.S. Court of Appeals.) After that 2006 decision, AT&T, Qwest Communications and BellSouth Corp. filed for similar relief -- lifting regional, market-specific price caps.

COMPTEL says the Qwest experience in Omaha, Neb., has been a bad one, with access rates jumping by 30 percent or more for the competitor companies after the FCC granted the waiver. The six cities where Verizon is petitioning for FCC relief also include Philadelphia; Boston; New York; Virginia Beach, Va.; and Providence, R.I., meaning the relaxed regulations would apply in major markets from New England to North Carolina.

The six markets include about 35 million Americans, or 13 million households. Smaller carriers such as Remi, however, generally focus less on the residential market and more on serving business clients, which is more lucrative.

Dow Jones
Provision Cuts FCC Red Tape; Lawmakers Concerned
By Corey Boles
July 28, 2007

WASHINGTON -- Capitol Hill lawmakers are troubled by attempts by Qwest Communications International Inc. (Q) and Verizon Communications Inc. (VZ) to use a legal loophole to reduce regulatory burdens.

The issue involves "forbearance petitions," where such firms ask the Federal Communications Commission to be excused from certain rules, arguing that they are no longer relevant. These large firms have filed petitions that would allow them to charge smaller carriers higher rates for network access.

The issue arose at a House telecommunications subcommittee hearing this week, when several lawmakers questioned the five FCC members, including Chairman Kevin Martin, about the practice.

Rep. Edward Markey, D-Mass., chairman of the subcommittee, expressed his concern about the "effects on competition and consumers that these petitions pose."

In the 1996 Telecommunications Act, Congress allowed FCC-regulated companies to seek forbearance from outdated regulations. Companies have attempted, without much success, to use this power over the last 10 years.

That trend may be changing.

Under the FCC's Martin, those petitions are starting to be looked at more favorably than they ever were in the past, say analysts.
Martin told reporters after the hearing this week that Congress provided for a forbearance authority that allowed companies to seek relief if specific standards were met.

"The commission has to implement that according to the standard and will continue to do so," Martin said.

The involvement by lawmakers is significant.

If they pursue the matter and keep the pressure on Martin, it would make it more difficult for him to allow the forbearance requests to be used as they are. Congress also could amend the 1996 law and ban the practice, but there is little indication of this occurring yet.

The controversial petitions involve rates for network access. Many smaller U.S. companies don't have networks that go right to their customers' homes or businesses, known as the "last mile." These networks are expensive to build and maintain, and offer limited revenue in return.

In a bid to spur competition, the 1996 act compels the network owners - AT&T Inc. (T), Qwest and Verizon - to offer access at artificially reduced prices to their competitors.

The large companies argue sufficient competition exists in many urban markets and point to the rapid growth of voice and broadband services by cable firms. These large companies - the descendants of the original AT&T, also known as Ma Bell - argue they should be able to increase prices.

They would still offer discounts from the price they charge their own business customers, but these charges would increase, often significantly.

In 2005, the FCC granted such a request to Qwest affecting the Omaha, Neb., market. It agreed with Qwest's claim that Cox Communications Inc.'s presence in the city was providing sufficient competition, telling Qwest that it could increase rates charged to smaller companies.

One of the companies affected by the Omaha decision is McLeodUSA Inc. It relies on Qwest's network to supply voice and broadband service to its small and medium-sized business customers. McLeodUSA told the FCC if the decision stood, it would be forced to withdraw from the Omaha market. This would force some 4,500 customers to find an alternate provider.

McLeodUSA this week filed one final appeal with the FCC, but the company's deputy general counsel Bill Haas said an exit plan from Omaha is being prepared.

Worrying for the company, which is currently considering an initial public offering, is that in the wake of its Omaha success, Qwest has now filed similar forbearance petitions in four other markets McLeodUSA operates in: Denver, Minneapolis, Phoenix and Seattle.

"We've filed evidence with the FCC demonstrating those markets are robustly competitive and asked for relief similar to that we've been granted in Omaha," said Steve Davis, senior vice president of public policy at Qwest.

By filing forbearance petitions on these rate issues, the companies force the FCC to act within 15 months on the requests.

"Forbearance petitions put a shot clock on the FCC to look at rules and then provide a legal justification why those rules should exist," said Robert Quinn, a senior vice president in AT&T's Washington office.

AT&T is prevented from filing forbearance petitions affecting prices charged to other carriers for four years as a condition of its takeover last year of BellSouth Corp.

More imminent than the new Qwest filings is the fate of forbearance applications lodged by Verizon affecting six markets on the East Coast. The company has made similar arguments to Qwest's for Boston, New York, Philadelphia, Pittsburgh, Providence, R.I., and Virginia Beach, Va.

Verizon spokesman David Fish defended the company's petition for relief.

"One would have to have his eyes closed not to notice the new technologies and vast array of providers doing business in these cities," Fish said.

Again, smaller carriers dispute this.

"In the markets we serve we have not seen the degree of competition that Verizon claims exists," said Gregory Kennan, vice president of regulatory affairs at One Communications.

One Communications, based in Waltham, Mass., is the largest privately held competitive carrier in the U.S., providing voice and broadband service to around 160,000 businesses. It is present in five of the markets where Verizon is seeking relief.

The FCC faces an initial deadline of September, but may push back a decision until the end of the year. The market is watching closely to see if the Qwest decision was an anomaly or a sign of things to come.

If it is the latter, lawmakers on Capitol Hill might take an even more active role in pressuring Martin and his fellow FCC commissioners, analysts say.

Dow Jones
Smaller Telecom Cos on Losing Side Of FCC Red Tape Cutting
By Corey Boles
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WASHINGTON – Small telecommunications companies from Omaha to Virginia Beach might be early casualties in the growing conflict between traditional telephone companies and cable operators.

They stand to lose if the Federal Communications Commission takes steps to lighten the regulatory load for large phone companies such as Qwest Communications International Inc. (Q) and Verizon Communications (VZ) as they compete with cable companies.

Smaller companies, which rely on regulatory protection to allow them to compete, are increasingly finding it harder to make ends meet.

One such company, McLeodUSA Inc. of Cedar Rapids, Iowa, has issued such a warning. If an FCC order granting relief to Qwest survives a legal challenge, McLeodUSA said it will be forced to cease providing service to the Omaha, Neb., residential and commercial markets.

McLeod may not be alone. In six major East Coast urban markets, Verizon has filed a waiver appeal with the FCC similar to that granted to Qwest. Were it to be successful, there is the possibility that smaller carriers in Boston; New York; Philadelphia; Pittsburgh; Providence, R.I.; and Virginia Beach, Va., could find it difficult to continue to compete, lawyers familiar with the case said.

The Qwest decision is being contested before the courts by the lobby group for competitive carriers, known as Comptel. Oral arguments in the case were made in Washington this week.

"If the court doesn't overturn or significantly modify the decision, we cannot be in the Omaha market," said Royce Holland, McLeod chief executive. "We will try and sell our assets in a fire sale. If we can't, we'll just to have to walk away."

Around 3,000 residential and commercial customers would be directly affected by the FCC's decision, but Holland said the company would pull out altogether, leaving 4,500 customers in the city left scrambling for a new provider.

The FCC has until roughly the end of the year to decide on Verizon's requests, but some fear it may take the same approach in those cases as it did in Omaha.

"The Verizon petitions are the main event this year," said Tom Cohen, a Washington-based telecommunications lawyer with Kelley Drye Collier Shannon. "We're going to see if the FCC will engage in a proper, robust analysis of competition or whether it will continue the superficial analysis that we saw in Omaha."

Cohen has represented smaller telecommunications companies in the past and is involved in the Omaha court challenge.

In most parts of the U.S., the big three former Bell companies - AT&T Inc. (T), Verizon and Qwest - control the backbone to the phone system. They in turn are obliged by the FCC to offer discounted rates to smaller companies that want to offer a competitive service. This is in recognition of the fact that it would be prohibitively expensive for those companies to attempt to build their own networks.

The competitive tension between the smaller carriers and the larger players in the market is nothing new. It has been a feature of the marketplace since the old AT&T, "Ma Bell," was broken up in 1984. But what is changing is the increasingly prominent role played by cable operators in entering the telephone market. They are not obliged to allow smaller carriers to use their networks, and the larger telecommunications companies argue this puts them at a competitive disadvantage.

So they are using a loophole included in the 1996 Telecommunications Act that Congress deliberately added to ensure companies had the ability to appeal against overly burdensome red tape. Known as forbearance waivers, the industry has consistently attempted to use them with little success over the last decade.

The fear in some quarters is that the successful forbearance application in Omaha may signal a changing attitude in the corridors of the FCC. Ironically, one of the fiercest critics of the FCC's actions in this area is Earl Comstock, a former advisor to Sen. Ted Stevens, R-Alaska, who helped draft the 1996 Telecommunications Act. Today, Comstock is chief executive of Comptel, and is a virulent critic of the FCC.

"The truly pathetic level of analysis that has evolved in the FCC's forbearance decisions frankly would never have occurred to Congress in the mid-1990s," said Comstock. "You were dealing with a very different FCC that took its job much more seriously. It viewed its role to uphold the law rather than granting whatever relief it could to the incumbents."

An FCC official, speaking on the condition of anonymity, rejected the notion that the agency's analysis was anything but robust. "The FCC looks at whether there is sufficient competition to warrant the unbundling of these rates," said the official. "It took a very careful and targeted approach to the relief that was granted."

Verizon said that it is seeking relief in the East Coast markets because it is rapidly losing market share to cable.

"These are very competitive areas, with significant competition from cable and other providers, most of whom face little to no regulation," said David Fish, a Verizon spokesman. Fish went on to say that Verizon will still offer access to other carriers to its network at less than retail prices known as special access. But Verizon wouldn't say how much more expensive this is than the current rates it charges to these carriers.

In Omaha, McLeod's Holland estimates his costs increased three- or fourfold in the wake of the FCC's decision. Qwest said it wouldn't comment for this story.

According to Marty Clift, a spokesman for Cavalier Telephone, which provides service to around 50,000 lines in Virginia Beach, a similar decision there would make it very difficult for the company.

"It would likely result in substantial rate increases for Cavalier and impede its ability to provide a competitive service to residential and commercial customers," said Clift.

What seems certain is that the large phone companies, wary of the fact their revenue is declining due to the impact of cable, will continue to use whatever methods they can to shore up their numbers. Whether the FCC continues to offer relief to the big players to the detriment of the smaller companies is unclear. But according to the competitive market, if the FCC doesn't change its tune, there will be far fewer smaller companies competing.

"The sum of this is that it would make it more difficult for competitors to get into Verizon's marketplaces for prime Eastern seaboard locations in residential and commercial telephone services," said Comstock.